* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 7th December, 2006**

\+ LA.APP. 793/2006

\# U.O.I ..... Appellant
! Through : Mr. S.S. Gulia, Advocate.

versus

$ JITENDER KUMAR & ANR ..... Respondent
^ Through : Mr. Sanjay Poddar, Advocate.

AND

\+ LA.APP. 794/2006

\# UOI ..... Appellant
! Through : Mr. S.S. Gulia, Advocate.

versus

$ MADAN MOHAN & ANR ..... Respondent
^ Through : Mr. Sanjay Poddar, Advocate

AND

\+ LA.APP. 795/2006

\# U.O.I ..... Appellant
! Through : Mr. S.S. Gulia, Advocate.

versus

$ TARA CHAND & ANR ..... Respondent
^ Through : Mr. Sanjay Poddar, Advocate

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AND

\+ LA.APP. 797/2006

\# UOI ..... Appellant
! Through : Mr. S.S. Gulia, Advocate.

versus

$ RANDHIR SINGH & ORS. ..... Respondent
^ Through : Mr. Sanjay Poddar, Advocate.

CORAM:
* **HON'BLE MR. JUSTICE MUKUL MUDGAL**
* **HON'BLE MR. JUSTICE J.P. SINGH**

1. Whether Reporters of local papers may be allowed to see the judgment.
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

* **Mukul Mudgal, J.**

These are the appeals filed by the appellants challenging the order, judgment and decree passed by the learned Additional District Judge in respect of the land acquired in village Bakkarwala. Section 4 notification was issued on 15.10.1993 for public purpose namely for "water treatment plant of Dwarka Project". The Land Acquisition Collector made the award bearing No. 12/95-96 @ Rs. 96,875/- per bigha. Upon reference under Section 18 of the Act the same was enhanced to Rs.1,08,000/- per bigha by the learned Additional District Judge. The assessment for the compensation has been challenged by both the

land owners and the Land Acquisition Collector. It is admitted that this court in the case of LA.APP. No.189/2006 titled Jai Singh & Ors. Vs. UOI decided on 25.5.2006 fixed the market value of the land acquired by the same award at Rs.1,32,000/- per bigha.

In view of the decision of Jai Singh (supra) the same are liable to be dismissed and as such dismissed leaving the parties to bear their own costs.

MUKUL MUDGAL, J

J.P. SINGH, J

DECEMBER 07, 2006
mb

IN THE HIGH COURT OF DELHI

\+ LAAPP No. 189-91/2006 & CM 4030/2006

Judgment reserved on : 17 & 18.5.2006
% Judgment delivered on : May 25, 2006

\# Jai Singh & Others. ....Appellants
! through: S/sh.D.V. Khatri, S.S. Gulia, P.C. Sharma, Sanjeev Kumar and Mr. Roop Chand, Advocates.

Versus

$ Union of India and Another. ....Respondents
^ through: Mr. Sanjay Poddar for UOI.
Mr. Gaurav Sarin for DDA.

AND

LAAPP NO. 812/2005 & CM 17905/2005

Union of India ..... Appellants
through Mr. Sanjay Poddar, Advocate.

VS

\# Jai Singh & Ors. ....Respondents
! through: S/sh.D.V. Khatri, S.S. Gulia, P.C. Sharma, Sanjeev Kumar and Mr. Roop Chand, Advocates.

AND

LAAPP No. 281/2006 & CM 5117/2006

\# Bhoop Singh ....Appellants
! through: S/sh.D.V. Khatri, S.S. Gulia, P.C. Sharma, Sanjeev

Kumar and Mr. Roop Chand, Advocates.

Versus

$ Union of India and Another. ....Respondents
^ through: Mr. Sanjay Poddar for UOI.
Mr. Gaurav Sarin for DDA.

AND

LAAPP NO. 828/2005 & CM 17950/2005

Union of India ..... Appellants
through Mr. Sanjay Poddar, Advocate.

VS

Bhoop Singh ....Respondent
! through: S/sh.D.V. Khatri, S.S. Gulia, P.C. Sharma, Sanjeev Kumar and Mr. Roop Chand, Advocates.

AND

LAAPP NO. 568/2005

Ranbir Singh ....Appellant
! through: S/sh.D.V. Khatri, S.S. Gulia, P.C. Sharma, Sanjeev Kumar and Mr. Roop Chand, Advocates.

Versus

$ Union of India and Another. ....Respondents
^ through: Mr. Sanjay Poddar for UOI.
Mr. Gaurav Sarin for DDA.

AND

LAAPP NO. 782/2005 & CM 17517/2005

Union of India ..... Appellant
through Mr. Sanjay Poddar,
Advocate.

VS

Ranbir Singh ....Respondent
! through: S/sh.D.V. Khatri, S.S.
Gulia, P.C. Sharma, Sanjeev
Kumar and Mr. Roop Chand,
Advocates.

AND

LAAPP NO. 648/2005

Raghbir ....Appellant
! through: S/sh.D.V. Khatri, S.S.
Gulia, P.C. Sharma, Sanjeev
Kumar and Mr. Roop Chand,
Advocates.

Versus

$ Union of India and Another. ....Respondents
^ through: Mr. Sanjay Poddar
for UOI.
Mr. Gaurav Sarin for DDA.

AND

LAAPP NO. 326/2006

Bhoop Singh ....Appellant
! through: S/sh.D.V. Khatri, S.S.
Gulia, P.C. Sharma, Sanjeev
Kumar and Mr. Roop Chand,
Advocates.

Versus

$ Union of India and Another. ....Respondents
^ through: Mr. Sanjay Poddar for UOI.
Mr. Gaurav Sarin for DDA.

AND

LAAPP NO. 835/2005 & CM 17977/2005

Union of India ..... Appellants
through Mr. Sanjay Poddar, Advocate.

VS

Bhoop Singh ....Respondent
! through: S/sh.D.V. Khatri, S.S. Gulia, P.C. Sharma, Sanjeev Kumar and Mr. Roop Chand, Advocates.

AND

LAAPP No. 609/2005

Raghbir Singh ....Appellant
! through: S/sh.D.V. Khatri, S.S. Gulia, P.C. Sharma, Sanjeev Kumar and Mr. Roop Chand, Advocates.

Versus

$ Union of India and Another. ....Respondents
^ through: Mr. Sanjay Poddar for UOI.
Mr. Gaurav Sarin for DDA.

AND

LAAPP NO. 864/2005 & CM 18104/2005

Union of India ..... Appellants
through Mr. Sanjay Poddar,
Advocate.

VS

Raghbir Singh ....Respondent
!
through: S/sh.D.V. Khatri, S.S.
Gulia, P.C. Sharma, Sanjeev
Kumar and Mr. Roop Chand,
Advocates.

AND

LAAPP Nos. 183/2006, 184/2006, 845/2005 & CMs. 18016/2005 & 5629/2006, 319-21/2006, 779-80/2005, 783/2005, 802/2005 & CM 17867/2005, 813/2005 & CM 17909/2005, 834/2005 & CM 17973/2005, 841/2005 & cm 17997/2005, 843/2005 & CM 18009/2005, 847/2005 & CM 18084/2005, 859/2005 & CM 18079/2005, 860/2005 & CM 18087/2005, 861/2005 & cm 18092/2005, 863/2005 & CM 18100/2005, 865/2005 & cm 18108/2005, 336-37/2007 & CM 6664/2006, 858/2005 & CM 18074/2005, 836/2005 17981/2005, 595/2005, 596/2005, 604/2005, 605/2005, 606/2005, 607/2005, 608/2005, 617/2005, 618/2005, 620/2005, 621/2005, 647/2005, 649/2005, 650/2005, 685/2005, 692/2005 & cm 15900/95, 693/2005, 718/2005 & CM 16906/2005, 720/2005 & CM 16920/2005, 776/2005 & CM 17191/2005, 777/2005 & cm 17304/2005, 778/2005 & CM 17308/2005, 781/2005 & cm 17408/2005, 792/2005 & CM 17813/2005, 797/2005 & CM 17835/2005, 798/2005 & CM 17841/2005, 799/2005 & cm 17845/2005, 793/2005 & CM 17817/2005, 794/2005 & 17823/2005, 801/2005 & 17866/2005, 803/2005 & CM 17863/2005, 804/2005 & CM 17874/2005, 806/2005 & CM 17877/2005, 807/2005 & CM 17885/2005, 808/2005 & CM 17889/2005, 809/2005 & cm 17893/2005, 810/2005 & CM 17897/2005, 811/2005 & CM 17900/2005, 814/2005 & cm 17913/2005, 815/2005 & CM 17917/2005, 816/2005 & CM 17922/2005, 818/2005 & cm 17930/2005, 819/2005 & CM 17934/2005, 820/2005 & cm 17938/2005, 821/2005 & CM 17942/2005, 827/2005 & CM 17946/2005, 829/2005 & CM 17954/2005, 830/2005 & CM 17958/2005, 831/2005 & CM 17962/2005, 832/2005 & CM 17966/2005, 833/2005 & CM 17970/2005, 837/2005 & CM 17985/2005. 838/2005 & CM 18001/2005, 840/2005 & CM 17993/2005, 842/2005 & CM 18005/2005, 844/2005 & CM 18013/2005, 846/2005 & CM 18020/2005, 848/2005 & CM 18031/2005, 849/2005 & CM 18030/2005, 850/2005 & CM 18045/2005, 851/2005 & CM 18042/2005, 852/2005 & CM 18050/2005,

853/2005 & CM 18054/2005, 854/2005 & CM 18058/2005, 855/2005 & CM 18062/2005, 856/2005 & CM 18065/2005, 857/2005 & CM 18070/2005, 862/2005 & CM 18096/2005, 58/2006 & CM 1068/2006, 59/2006 & Cms.1154-1155/2006, 279/2006 & Cms. 5108-5110/2006, 280/2006 & Cms. 5111-5113/2006, 594/2005, 817/2005 & CM 17926/2005, 822-26/2005, 574/2005, 575/2005, 576/2005, 577/2005, 592/2005

CORAM :

HON'BLE MR. JUSTICE SWATANTER KUMAR
HON'BLE MR. JUSTICE S. L. BHAYANA

1. Whether reporters of local paper may be allowed to see the judgment?

2. To be referred to the reporter or not? Yes

3. Whether the judgment should be referred in the Digest? Yes

SWATANTER KUMAR, J.

All the above 111 Land Acquisition Appeals have been preferred either by the claimants or by the Union of India against the judgments of the Reference Court whereby it partially allowed the reference and granted compensation to the claimants @Rs.1,08,000/- per bigha with other statutory benefits and interest payable in terms of provisions of Section 23 (1-A) of the Land Acquisition Act.

It is not necessary for us to refer to the facts of each appeal as the learned counsel appearing for the appellants in all these appeals argued and referred to the pleadings and record of the following appeals :-

(a) Bhoop Singh Vs. Union of India & Others (LAAPP No. 281/2006)

(b) Union of India Vs. Bhoop Singh (LAAPP No. 828/2005)

(c) Jai Singh and Others Vs. Union of India & Othes (LAAPP 189-91/06)

(d) Union of India Vs. Jai Singh and Others (LAAPP No.812/2005)

(e) Ranbir Singh Vs. Union of India & Another (LAAPP No. 568/2005)

(f) Union of India Vs. Ranbir Singh (LAAPP No. 782/2005)

(g) Raghbir Vs. Union of India & Another (LAAPP NO. 649/2005)

(h) Bhoop Singh Vs. Union of India & Ors (LAAPP NO. 326/2006)

(i) Union of India Vs. Bhoop Singh (LAAPP. No.835/2005)

(j) Raghbir Singh Vs. Union of India & Another (LAAPP. No. 609/2005)

(k) Union of India Vs. Raghbir Singh (LAAPP. No.864/2005)

These cases were also taken as lead cases by the Reference Court and the judgments passed in these cases were relied upon in disposing of other references as well. Thus, we would be referring primarily to the facts and evidence led in the above mentioned cases as it would help in bringing the correct facts and evidence on record and would also help in determination of questions involved in the present appeals. We would dispose of all these appeals by this common judgment.

All the claimants are bhumidar or owners of agricultural land fallen in the revenue estate of Village Bakarwala. This land was acquired for public purpose namely "Water Treatment Plant for Dwarka Project" vide notification dated 15th October, 1993, issued under Section 4 of the Land Acquisition Act (hereinafter referred to as the Act). Declaration under Section 6 was issued on 12th October, 1994. The appropriate Government invoked the emergency provisions under

Section 17(1) of the Act for dispensing with the compliance of Section 5A of the Act. After following the prescribed procedure, the Land Acquisition Collector vide award No.12/95-96 had assessed the market value of the acquired land at Rs.4.65 lakhs per acre (Rs.96,875/- per bigha). This compensation was computed by the Collector with reference to the policy of the Government of Delhi, which came into effect from 27th April, 1990 fixing the minimum price of the agricultural land at Rs.4.65 lakhs per acre.

The claimants being dissatisfied with the award of the Collector preferred references under Section 18 of the Act, which in turn were referred to the learned District Judge, Delhi. The parties led evidence. The claimants, while relying upon the sale instances, award, allotment letters issued by the DDA to various public institutions, had claimed compensation @Rs.2000/- per square yards. The Reference Court, keeping in view the pleadings of the parties, had framed all or any of the following issues :-

1. What is the effect of the Delhi Land Reforms Act on the market value of the land?

2. Whether the Delhi Land Reforms Act is applicable to the land in dispute and if so, to what effect?

3. Whether the Delhi Jal Board is not a necessary party to the present proceedings as claimed by it?

4. What was the market value of the acquired land on the date of notification under Section 4 of the LA Act?

5. To what enhancement, if any, the claimants are entitled to?

6. Whether the claimants are entitled to the special damages as claimed for?

7. Relief.

The claimants had produced four sale deeds in the case of Jai Singh Vs. Union of India, LAC No. 77/04, which as recorded by the trial Court in its judgments were exhibited as Exh.P-1 to Exh. P-4 with the consent of counsel for the parties. The respondents had produced the Government Policy dated 3rd May, 1990, which was exhibited as Exh.R-2 and two sale deeds in relation to sale of land in Village Mundaka, which were exhibited as Exh.R-3 and Exh.R-4. In this case, the parties had not led any oral evidence. However, in the case of Raghbir Singh Vs. Union of India (LAC No. 208/2004) and Ranbir Singh Vs. Union of India (LAC No. 239/2004), the parties had also led oral evidence. The claimant had examined PW-1 Khem Singh, UDC from DDA in LAC No. 104/99, who had brought the summoned record and copy of letter of allotment to institution dated 8th November, 1999, Exh. PW-1/A. PW-2 Parkash Chand again a UDC from L&DO, Nirman Bhawan, New Delhi, had produced and proved on record Exh.PW-2/A and Exh.PW2/B, first was the letter dated 3rd March, 1993 regarding fixation of prices of Govt. land for allotment of various social, cultural, charitable and other organisations while the other was regarding schedule of market rates. PW-3 Rajeev Kumar, Halka Patwari had proved on record Exh. PW3/A being certified photocopy of ak sajra of Village Bakarwala and he had also stated that it was surrounded by Village Mundaka in North, Baprola, Dichao Kala and Tilan pur

market rate, which were exhibited as Exh.PW5/A and Exh.PW5/B. PW-6 Rajiv Kumar, Halka Patwari was also examined in this case. PW-7 Anar Singh, UDC, DDA, L&B Residential, Vikas Sadan, New Delhi was also examined, who proved the Exh.PW7/A and Exh.PW7/B in relation to allotment of plot in Pitampura @Rs.286.50 per square meter.

All these witnesses were also examined in LAC No. 70/99 titled as Dharam Singh Vs. Union of India.

Above is the entire documentary and oral evidence led by the parties in all these cases. Vide different judgments, the learned Reference Court granted uniform compensation to the claimants in all these cases. The claimants were awarded compensation @Rs.1,08,000/- per bigha in addition to other statutory benefits and interest payable under the provisions of the Act. The Reference Court while solely relying upon Exh.R-4, which was a sale deed dated 4th March, 1994 in relation to 1 bigha of agricultural land in the revenue estate of Village Mundaka for consideration of Rs.1 lakh and by adding the stamp value of Rs.8,000/-, had granted the compensation @Rs.1,08,000/- per bigha to the claimants. The claimants being dissatisfied from the judgment of the Reference Court have filed 38 appeals before this Court praying for further enhancement of awarded compensation while the Union of India has preferred 73 appeals on the ground that compensation awarded by the Reference Court is excessive, unreasonable and without any evidence and pray that the award of the Collector awarding

compensation @Rs.Rs.4.65 lakhs per acre (Rs.96,875/- per bigha) be restored.

Before referring to the merits of the contentions raised by learned Counsel appearing for the parties in all these appeals, it will be appropriate to have a glance of the various sale deeds, which were produced and proved by the parties on record in these cases.

Sr.No	*Details of sale deeds*	*Village*	*Date of execution*	*Value per bigha*
1.	Rs.3,02,400/- for land measuring 1 bigha (Exh. P-1) (LAC No. 77/2004)	Tikri Kalan	23.4.1993	Rs.3,02,400/-
2.	Rs.9,07,200/- for land measuring 3 bigha (Exh. P-2) (LAC No.77/2004)	Tikri Kalan	23.4.1993	Rs.3,02,400/-
3.	Rs.3,02,400/- for land measuring 1 bigha (Exh.P-3)(LAC No.77/2004)	Tikri Kalan	23.4.1993	Rs.3,02,400/-
4.	Rs.4,50,000/- for land measuring 1 bigha (Exh.P-4)(LAC No.77/2004)	Tikri Kalan	28.2.1996	Rs.4,50,000/-

Sr.No	*Details of sale deeds*	*Village*	*Date of execution*	*Value per bigha*
1.	Rs.1,25,000/- for land measuring 1 bigha (Exh. P-1/P-3) (LAC No. 111/99)	Mundaka	27.2.1990	Rs.1,25,000/-
2.	Rs.1,83,000/- for land measuring 1 bigha 2-1/4 biswas (Exh. P-3) (LAC No. 111/99)	Mundaka	24.1.1992	Rs.1,64,494/-

Sr.No	*Details of sale deeds*	*Village*	*Date of execution*	*Value per bigha*
1.	Rs.50,000/- for land measuring 2 bigha 7 biswas (Exh.R-3)(LAC No.77/2004)	Mundaka	11.3.1994	Rs.21,276/-
2	Rs.1,00,000/- for land measuring 1 bigha (Exh. R-4)(LAC No.77/2004)	Mundaka	4.3.1994	Rs.1,00,000/-

On the basis of above sale deeds and other documentary and oral evidence produced by the claimants, the learned counsel appearing for the claimants/appellants argued that the compensation awarded to the claimants ought to be enhanced by this Court, inter-alia, on the following grounds :-

(i) the learned Reference Court has fallen in error of law and appreciation of evidence by discarding Exh.P-3, which is the sale deed dated 27th February, 1990 for sale of one bigha of land wherein the vendor had sold one bigha of land in the revenue estate of Village Mundaka for a sum of Rs.1,25,000/- and solely relied upon a post notification sale deed in relation to the same Village while awarding the compensation (Exh.R-4).

(ii) on the basis of Exh.P-3, the claimants would be entitled to get compensation @Rs.1,35,000/- (Rs.1,25,000/- being sale consideration +Rs.10,000/- towards stamp duty) with further increase @15% per annum from the year 1990 to 1993, the date of issuance of notification under Section 4, which comes to Rs.2,08,406/-.

(iii) the Reference Court while relying upon Exh.P-2 should have awarded compensation @Rs.3,02,400/- per bigha whereby the land measuring about 3 bigha in the revenue estate of Village Tikri Kalan was sold for a sum of Rs.9,07,200 on 23rd April, 1993 just few months prior to the issuance of Notification under Section 4 of the Act. Thus, this was the best piece of evidence before the Reference Court for determining the fair and reasonable market value of the land.

(iv)the Reference Court has ignored Exh.P-1, the sale deed in relation to the land situated in the Village Ghewra.

(v)in terms of Government Policy Exh.R-1, the claimants were entitled to increase @12% compounding per year on the value fixed under the Policy. In terms of this policy, as of 1993, the claimants would be entitled to compensation @Rs.1,72,000/- per bigha in any case.

(vi)while heavily relying upon Exh.PW1/A, the letter issued by the DDA to the Delhi Water Supply and Sewage Disposal Undertaking, it was argued that the DDA, without any further development and in fact in the conditions in which the land was acquired, had allotted land to the undertaking @Rs.4,00/- per square yard. Even after making the deduction @25%, the market value of the land ought to have been determined at Rs.3,00/- per square yard i.e. 3,02,400/- per bigha.

(vii)an ancillary argument to the above is that by applying the Golden Mean Rule to all the above computation, the claimants in any case would be entitled to compensation @Rs.226/- per square yard i.e. 2,28,848/- per bigha.

On the other hand, the learned counsel appearing for the respondent/Union of India contended that it is not permissible in law to apply the principle of 15% increase as there is no rule even permitting universal increase @12% annually and for this purpose he placed reliance upon the judgment of this Court in the case of Bedi Ram Vs. Union of India and Another 93 (2001) DLT 150 (DB) and Amar Singh Vs. Union of India (RFA No. 494/88 decided on 7th February, 2003). He also contended that the land at the time of acquisition was simplicitor an agricultural land and the rates of the developed land whether applicable to institutional or commercial colonies cannot be taken as a guiding factor for determining the market value of the acquired land. While relying upon the

judgment of Supreme Court in the case Kiran Tandon Vs. Allahabad Development Authority & Another (2004)10 SCC 745, it was also contended that even if any sale deeds are to be taken into consideration, the Court should apply at least 33% deduction for determining the fair market value of the agricultural land. On this premise, it is argued that firstly the sale deeds have not been proved in accordance with law by the claimants and even if they are to be taken into consideration, the reflected value would have to be reduced in terms of this principle of law. It is lastly submitted that the value of Exh.R-4 should have been reduced keeping in view the fact that the sale deed was much subsequent to the date of issuance of notification and the compensation awarded by the Collector would be fair.

Firstly we would deal with the contents of Exh.PW1/A. This document is heavily relied upon by the claimants and they claimed compensation @Rs.300/- per square yards after making certain deductions on account of development charges. This is a letter issued by the DDA to Delhi Water Supply & Sewerage Disposal Undertaking vide which land measuring 4.27 acre Site No.A-2, 4, 583 acres Site No.A-3 was allotted @Rs.15.60 lakhs per acre. This rate was subsequently enhanced to Rs.20 lakhs per acre + 24% ground rent per annum. A bear reading of the letter shows that it related to allotment of developed plot in the area of Nazafgarh Township. The land was given for the purpose of construction of Mini Sewage Treatment Plant and Sewage Pumping Station for Nazafgarh

Township and adjoining areas. It has been held in different cases that the allotment by the authorities of developed areas cannot be good guide for determining the fair market value of the agricultural land, which is acquired and more particularly when the instances of sale of agricultural land of the same village are available on record. Reference in this regard can be made to a judgment of the Supreme Court in the case of **Bhim Singh and Others Vs. State of Haryana and Another** AIR 2003 SC 4382. The burden of proving that the claimants are entitled to the same compensation @ Exh. PW1/A even after reasonable deduction was entirely upon the claimants. It was for them to show that acquired land had the same location and potential as the land covered under Exh. PW1/A. As far as this document itself is concerned, it does not reflect specifically that from which part of Delhi the land was allotted much less giving the revenue estate of relevant Village. The Najafgarh Township area is a very vast area and thus, it is not possible for the Court to adopt this document as a relevant comparable piece of evidence for adjudicating the controversy in issue. For this reason, we are unable to accept the contention of the claimants that they are entitled to get compensation on the strength of Exh.PW1/A. Exh.P-1 to P-4 (in LAC 77/2004) are the sale instances of agricultural land relating to the land situated in the revenue estate of Village Tikri Kalan. Of course all these sale instances are prior to notification issued under Section 4 of the Act except Exh.P-4, which is in fact nearly 2 years post notification and as such is not relevant for

any purpose. As far as Exh.P1 to P3 are concerned they relate to revenue estate of another Village. Exh.P-3 (in LAC No. 111/99) is a sale instance of agricultural land relating to the land situated in the revenue estate of Village Ghewra. As far as Exh.P-2 in LAC No. 77/2004 is concerned, it is a sale in favour of a public limited company where the vendor had sold nearly 3 bigha of agricultural land from the revenue estate of Village Tikri Kalan for a total consideration of Rs.9,07,200/-. This sale at the face of it was more for a commercial purpose and related to sale of land in another village.PW6 Rajiv Kumar, Halka Patwari in his statement no where stated that boundaries of Village Tikri Kalan and Village Ghewra were adjacent to that of Village Bakarwala and the nature, user and potential of the land of these villages were similar, if not identical. In the absence of any such specific evidence, the Court would not take into consideration Exh.P1 to P4 in LAC No.77/2004 and Exh.P-3 in LAC No. 111/99 in determining the fair market value of the land in question. As far as R-3 in LAC No. 77/2004 is concerned, it is a sale deed produced by the respondent vide which land measuring about 2 bigha and 7 biswas in Village Mundaka was sold for a sum of Rs.50,000/- on 11th March, 1994 i.e. subsequent to the date of notification in the present case. As per Exh.R-3, the value of the land would be Rs.21,276/- per bigha while the Collector himself has awarded a sum of Rs.96,875/- per bigha. Thus, Exh. R-3 is also an irrelevant document for determining the market value of the land in question.

Having discarded the above documentary evidence now we are left with

Exh.R-1, Exh.R-4 and Exh.P-3 and the oral evidence led by the parties to substantiate their respective claims. Exh.R-4 relates to sale of 1 bigha of land in the revenue estate of Village Mundaka, which was sold for a total consideration of Rs.1 lakh as on 4th March, 1994. This sale instance is nearly 6 months subsequent to the date of notification issued by the authorities under Section 4 of the Act. Exh.P3 in LAC NO. 111/99 relates to the sale of one bigha of land in the revenue estate of Village Mundaka for a consideration of Rs.1,25,000/- on 27th February, 1990 i.e. nearly 2-1/2 years prior to issuance of notification in question. Exh.R-2 is the Government policy dated 3rd May, 1990 vide which the Government had fixed the minimum price of agricultural land in the Union Territory of Delhi @Rs.4.65 lakhs per acre in addition to other benefits.

Learned Reference Court has noticed the Government policy Exh.R-2 fixing the minimum price of all the agricultural land by the Government at Rs.4.65 lakhs per acre but has declined to consider the same for awarding compensation to the claimants by stating "An increase at 12% per annum treating the base value at Rs.4.65 lacs per acre on 27.4.90 as per policy Ex.R2 cannot be granted as specific evidence as to the prevailing price as per Ex.R4 is available on record which pertains to sale of agricultural land in the vicinity."

While making the above observations, the learned Reference Court granted compensation @Rs.1,08,000/- per bigha on the basis of Exh.R-4. However, the Reference Court rejected and treated Exh.P-3 as not a genuine transaction. Exh.P3

is a sale instance relating to sale of land in the revenue estate of Village Mundaka. There does not appear to be any plausible reason, much less a logical differentiation in the reasoning for rejecting P-3 and entirely relying upon Ex.R-4. In relation to Ex.P3, it has been stated that respondents have challenged the correctness of Exh.P3 as no evidence has been led by the petitioners to show that the land in Village Bakarwala had the same potential as that of the plot of land sold as per Exh.P1/P3 in Village Mundaka. Exh.P1 to P3 were tendered in evidence and were duly accepted by the Court in presence of the counsel for the parties. As is clear from the order of the reference Court dated 13th May, 2004, the documents were filed, they were taken on record and then were tendered in evidence on behalf of the claimants and as there was no objection to exhibit the documents and read them in evidence in accordance with law, they were exhibited by a subsequent order passed on the same date. Once the respondents have waived objection, if any, in regard to exhibition and admissibility of the document then they could not even be heard to question the correctness of the said document particularly when they themselves led no oral evidence and only tendered Exh.R-1 to R4 in evidence in terms of order of the Reference Court dated 20th April, 2005. The parties opted to only tender the document in evidence and argued the cases on the strength of such document. It may also be noticed that certified copies of the sale instances have been filed in some cases while photocopies of the sale instances were filed still in some other cases. The copies of both Exh.P1 and R4,

thus were admitted in evidence and treated as relevant evidence by the Court. Rejection of one and acceptance of other at a subsequent stage, cannot be said to be just and proper. We must also notice at this stage that the parties had participated in the entire trial of different cases without raising any objection with regard to exhibition and admissibility of these documents. Objection in regard to exhibition and admissibility in evidence of an document is a waivable objection and a party by expression or conduct can waive such an objection. Having participated in the entire trial, none of them can be heard to object to exhibition and admissibility of the same documents.

Equally without merit is the other reason given by the learned reference Court for rejecting P-3. It has been recorded by the Reference Court that the petitioners have failed to lead any evidence to show that land situated in Village Mundaka has the same potential as that of Village Bakarwala. Firstly, this finding is not supported from the record. As per the statement of PW-6, the land of Village Mundaka was adjacent to Village Bakarwala towards north. He also proved on record Exh.PW6/A, which shows that boundary of both these villages is adjacent. Even the claimants have so stated before the Court. If this reason is to be taken as correct, in that event, the Reference Court could not have relied upon Exh.R-4 as such in arriving at the conclusion in the judgment under appeal. The respondent had admittedly led no oral evidence and has only placed on record Exh.R-1 to R-4. None of these documents shows that potential of the land of both

villages are identical or similar. On the same analogy, learned Reference Court should have rejected Exh.R-4. There is apparent anomaly in the reasoning given by the learned Reference Court.

Learned counsel appearing for the claimants also relied upon the judgment of this Court in the case of Smt. Omwati Vs.Union of India and Another (L.A.APPL.No. 94/2006 decided on 27th April, 2006) and argued that the same compensation could be awarded to the claimants with such reasonable deduction as may be permissible in law. For this purpose, he again relied upon the statement of PW-6 Rajiv Kumar, Halka Patwari to say that there is a boundary of village Ranhola in the east of the acquired land. It is also contended on behalf of the claimants that while assessing the market value of the acquired land, it must be taken into consideration that what use the land is capable of being put to in future and the Court should consider the possibilities of the land and not its realized possibilities while determining such matters. Reliance in this regard is placed upon the judgment of the Privy Council the case of Vyricherla Narayana Gajapatiraju Vs. Revenue Divisional Officer, Vizagapatnam AIR 1939 Privy Council 98.

It is true that this Court had considered at some length these aspects of acquisition proceedings with particular reference to the land in the revenue estaet of Village Ranhola. Not only the potential/future potential of the land but also the value of the land is to be determined with reference to the minimum price of land

mentioned by the Government in its own letter was considered and the Court held as under :-

> "15.....They are documents prepared by the government after due verification and surveys, but the documents itself does not refer to any distinct piece of evidence which was considered by the government for determining the minimum price payable for acquisition of agricultural land. At the same time, this policy decision of the government cannot be treated to be either entirely inadmissible or irrelevant for the purpose of determining the controversy in issue. This reflects the conscious decision of the appropriate government not to allow registration of the sale deeds, wherein the agricultural lands anywhere in Delhi are proposed to be sold below the specified rate i.e. Rs.4.65 lacs per acre (i.e. Rs. 1,11,778.84 per bigha). This value was fixed in the year 1990. We do not intend to say that the government is bound by this price and the claimants must get this price, but with such variations that are permissible in law, this would be some kind of a guideline for the court to arrive at just and fair market value of the land at the relevant time. The learned counsel appearing for the respondent, Union of India, while relying on the judgment of the Supreme Court in the case of *Virender Singh (supra)* argued that small pieces of land cannot at all be looked into by the courts while determining the compensation payable to the claimants for acquisition of vast stretches of lands. Firstly, this is, in our view not a correct reading of the judgment of the Supreme Court and secondly, the facts of that case were entirely different. Their Lordships of the Supreme Court held that "small bit of transaction would not be determinative factor for deciding the market value of vast stretch of land" where the land was acquired to the extent of 5,484 bighas and only one bigha vide Ex.A1 was made the basis for awarding the compensation by the court, and the same was not accepted by the Supreme Court. In the present case, the acquisition is only of 971 bighas but the sale instances placed on record by the claimants as well as the respondents were of land measuring 1 bigha to 4 bighas, as such these sale deeds cannot be treated at parity with Ex.A1 (in the case of *Ramphool and Anr. vs. Union of India; 1998 V AD (Delhi) 433).* It will be impracticable to imagine that the claimants or even respondents are expected to tender evidence of sale transactions where hundreds of bighas have been purchased or sold in acquisition proceedings or even sale of few hundreds of bighas.

No individual person and for that matter, even a corporate body would sell or buy the lands in hundreds of bighas in a place like Union Territory of Delhi, where yards of lands cost thousands of rupees. To require parties to lead such evidence is an illusory submission rather than a pragmatic view. We may also refer to a judgment of the Punjab & Haryana High Court in the case of *Baldev Singh vs. State of Haryana 1999 (3) PLR 141* where the court discussed this aspect as well as the aspect of the notified lands being surrounded by the boundaries of the revenue estates of other villages and its impact on the fixation of the compensation payable. The court after detailed discussion held as under:-

> "14. One can hardly trace any element of disparity between the case of Harpal Singh and the present appeals. In both the cases, the lands were acquired by the same notification dated 26.5.1981. Lands were acquired by a common notification in the revenue estates of all the three villages i.e. Patti Mehar, Jandli and Sounda. It is also an admitted case and is equally reflected by the site plans Ex.P.10 and Ex.P.11. The boundaries of the three revenue estates of these villages is common. In other words, the lands of each of these villages are adjacent to other while part of the land of Patti Mehar prior to the present acquisition was in Municipal Limits. This has been so reflected in the cases of *Pala Singh* and *Sudesh Kumar* (Ex.P.9). The lands acquired are at a distance from the grain market while those places were fully commercialised and developed when the lands in those areas were acquired. Thus, I find it difficult to plainly follow the said criteria for awarding the compensation in the present case. The necessary corollary thereto would be to make a reasonable deduction/cut from such amounts and to implement the rule of uniform compensation as afore-indicated to award the compensation which has been awarded in other connected cases for such similar lands. The lands in other cases are comparable or even somewhat similar. They have been acquired for one and the same purpose and, thus, difference of part of the land from the other land acquired would not be

of great significance.

15. For the reasons afore-stated I allow these appeals and enhance the compensation for acquisition of the lands of the land owners to Rs.2,91,800/- per acre. The land owners claimants would be entitled to statutory benefits under Sections 23 (1-A), 23(2) and 28 of the Act in accordance with law. However, in the facts and circumstances of the case, there would be no orders as to costs. The appeals are, accordingly, allowed, limited to the above extent."

16. Even in the case of *Ravinder Narain vs. Union of India AIR 2003 SC 1987*, the Court held as under:-

" It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices.

8. In the case of Suresh Kumar v. Town Improvement Trust, Bhopal (1989 (1) SVLR (C) 399) in a case under the Madhya Pradesh Town Improvement Act, 1960 this Court held that the rates paid for small parcels of land do not provide a useful guide for determining the market value of the land acquired. While determining the market value of the land acquired it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner. It is an accepted principle as laid down in the case of Vyricheria Narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapatnam, (AIR 1939 PC 98) that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser."

17. Further in the case of *Union of India vs. Bal Ram and another*

AIR 2004 SC 3981, the Court held as under:-

> "The ground urged before us is that in view of the decision in Kunwar Singh v. Union of India, 1998 (8) SCC 136 contiguity of villages could not by itself be sufficient to draw an inference of similarity in character of the lands in awarding the compensation and, therefore, the reasoning of the High Court is not correct. The High Court indeed did not rely upon the contiguity of the lands alone but if found that the nature/quality of the lands is by and large similar to those lands considered in Satpal's case. If that is the finding of the High Court, we do not think there would be any justification to make any distinction between lands which had been lying in Palam and Shahbad Mohamadpur. Therefore, the view taken by the High Court cannot be faulted with. The High Court also found that it would be unfair to discriminate between the land owners to pay more to some and less to others when the purpose of acquisition is same and lands are identical and similar, though lying in different villages, we find the judgment of the High Court to be fair and reasonable and no interference is called for. Therefore, the appeals stands dismissed."

18. It may also be noticed that certain principles relating to this aspect were also enunciated by the Supreme Court in the case of *The Land Acquisition Officer, Revenue Divisional Officer, Nalgonda (A.P.) vs. Morisetty Satyanarayana & Ors. 2002 (1) All India Land Acquisition and Compensation Cases 1.* Amongst others it was held that normally, the court would not consider post notification sale instances and an order based upon such instances may be held to be erroneous. Where the court basis its findings on sale instances relating to small pieces of lands belonging to different persons, deduction is required to be made. But wherever there is an increase in the market price of the land during the relevant years, then applying the development deduction on these grounds would not be necessary. These principles are to be kept by the court in mind while determining the compensation payable to the claimants.

19. We have already held that Ex. A4 (P4) and A3 cannot be looked into and the court cannot record its findings on the basis of

such evidence. Thus, the court would be left with exhibits R1, R2, R3, A1 and A2. Ex.A1 relates to the revenue estate of Village Tekri Kalan where 3 bighas of land was sold for Rs. 9,07,200/-. Vide Ex.A2, 1 bigha of land was sold for a sum of Rs. 1,25,000/- in the year 1990. There is no evidence on record to show that the land in the revenue estate of Village Tekri Kalan is adjacent to the land in question and both the lands have same potential and are capable of fetching the same price. PW2 in his affidavit Ex.PW2/A had specifically stated that Village Mundka is nearby and there are industries in those areas so the land acquired is fit for industrial development. Furthermore, even PW1 in his statement had stated that on the north of the revenue estate of Village Ranhola, Village Mundka is situated. Thus, the lands located in Village Mundka were stated to be little better than the acquired land but both the lands were stated to be near each other and were having great potential, both industrial as well as residential. The acquired land has all the facilities and necessities of day-to-day life. Thus, exhibit A2 can easily be looked into for determining the fair market value of the acquired land. For a sale instance or other piece of evidence to be relevant it must be 'a document which is admissible piece of evidence and is a comparable instance'. Of course, it is not necessary that it should be an absolutely identical piece of land in comparison to the acquired lands. This is an indication in regard to the price of the land surrounding the acquired land. Vide Ex.A2 land has been sold in Village Mundka which as per the evidence on record is a more potential area having higher value and is to some extent even developed. This is the own admission of the claimants as such the claimants cannot be entitled to the same value as reflected in Ex.A2. Some amount of deduction would have to be made to balance the higher potential of Ex.A2 by lowering the extent of compensation payable to the claimants. In the facts and circumstances of the case and the judgments relied above in the cases of *Baldev Singh (supra); Ravinder Narain (supra) and Union of India vs. Bal Ram and Anr. (supra)*, it will be appropriate to reduce the value of the acquired land by 25% to balance the higher potential of the developed areas and comparatively smaller pieces of land in comparison to the acquired land, location etc., thus making the value @ Rs.1 lakh per bigha.

20. The respondents have mainly relied upon Ex.R2 which again is a sale deed of small pieces of land. Ex.R2 is the document on which the thrust of the entire argument of the respondent is based. This is a sale deed executed in the year 1994 for a land measuring

about 1 bigha in Village Saffi Pur Ranhola for a sum of Rs.97,000/-. The notification under Section 4 was issued on 6.1.1995 which would be the relevant date for determining the fair market value of the land in question. Ex.R3 is still another sale deed dated 30.4.96 i.e. post-notification and vide this sale deed 4 bighas 16 biswas of land was sold in Village Saffi Pur Ranhola, Delhi. As per this sale deed the price would be nearly Rs.1,10,000/- per bigha though this sale deed is post-notification but still it reflects the two very pertinent facts which would throw light on determining the extent of compensation payable to the claimants:-

(a) That in Ex.R2, it has been recorded that it was converted into a farmhouse and plans for that were sanctioned as back as on 4.12.1987.

(b) That there is increasing trend in the prices of the property.

21. As per Ex.R2, one bigha was sold for Rs.97,000/- in the year 1994, while the land was sold @ Rs.1,10,000/- per bigha in the year 1996 vide Ex.R3. Both these material pieces of evidence have not been adverted to by the learned Reference Court. Even if this court treats Ex.R2 as the material piece of evidence as argued by the respondents for determining the fair market value of the land at the time of acquisition still there is a gap of nearly 6 months in the date of sale of Ex.R2 and issuance of notification under Section 4 acquiring the land in question. The claimants in any case would be entitled to increase in the price again on various counts i.e. development of the surrounding areas, increase in value of the land as well as other determining factors as contemplated under the provisions of Section 23 of the Act. From the evidence led by the appellants as well as the respondents there is hardly any major difference in the amount which can be determined as fair market value of the land at the time of acquisition. On the basis of Ex. A2 as well as Ex.R2, the compensation payable would approximately be the same particularly keeping in view the two basic ingredients which we have afore-noticed and as are clear from Ex. R3. The respondents are bound by both these exhibits and must bear the consequences thereof.

22. Now, let us revert back to one basic document and consequence thereof, which completely and discernly would have to be considered by the court. The policy of the government afore-noticed, had for reasons mentioned therein, clearly directed that the

minimum price of any agricultural land anywhere in Delhi would be Rs.4.65 lacs per acre. This value was effective from 27.4.1990. In other words, the minimum value of the agricultural land, except the river bed in Delhi, in the year 1995 would be much more than what has been indicated in the policy of the government. The object of the policy is to ensure that people do not evade stamp duty and other liabilities, but at the same time it is a document which is relevant. It may not be strictly binding on the State and cannot be enforced against the State as it is a document primarily prepared to prevent evasion of revenue and tax. This document again is a fair indication of the market value prevalent in Delhi in the year 1990 which according to the Government should be determined as the 'minimum price'. There is apparent distinction between 'minimum price' and 'fair market value' of the land as contemplated under Section 23 of the Act. The expression 'minimum' is capable of being understood and given different meanings in different contexts. But its basic understanding in common parlance can hardly be altered. According to Century Dictionary, the word 'minimum' means smallest amount or degree and it is smallest and next to nothing (*minimum est nihilo proximum).* Even in context to 'minimum wages' it indicates 'the bare subsistence minimum wages'. The Black's Law Dictionary explains the expression 'minimum as 'of, relating to, or constituting the smallest acceptable or possible quantity in a given case, minimum charge to a customer of a public utility'.

23. The clear consequence of this expression is that a 'fair market value' has to be read and construed in contradistinction to 'minimum price' and cannot be treated synonymous to that expression. In all normal circumstances, 'fair market value' should be higher than the 'minimum price'. The determination of the amount of compensation to be awarded has to take in its ambit the market value of the land on the date of publication of notification and also such amounts which may become payable to the claimants in reference to second and sixth clauses to Section 23 of the Act. Thus, market value of the land is a basic criteria which the court has to essentially take into consideration for determining the final amount of compensation to be awarded to the owners of the land. It cannot be the 'minimum price' of the land. The concept of payment of compensation has much wider connotation than the 'minimum price of the land'. In the case of *Union of India and Ors. vs. Pramod Gupta (D) by LRs and Ors. JT 2005 (8) SC 203*, while elucidating the various principles relating to acquisition proceedings under the provisions of the Act, the Court

also observed that the 'market value' is the ordinary price the property may fetch in open market if sold by a willing seller in effect by special needs of a particular purchase. The court could consider other sale instances in absence of sales of similar lands and also such other evidence that may be considered. The court emphasized that "The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by placing the two in juxtaposition."

24. On proper analysis of the factual matrix of the case, evidence on record and the principles of law afore-referred it is clear that in terms of Ex.A2, sale deed relating to October'1994, the land in the adjacent village of Mundka was sold @ Rs.1,25,000/- per bigha and by reducing the amount for better developed areas and location etc., it will be just and fair to assess the compensation payable to the claimants @ Rs.1 lacs per bigha.

Statement of PW-6 read in conjunction with Exh.PW6/A shows that acquired land is surrounded by different villages particularly Villages Ranhola and Mundaka. In regard to these Villages, recent judgments of this Court is available and practically in all cases compensation awarded by the Reference Court was enhanced or where the Court had declined to increase any amount, the amount of compensation was reasonably enhanced.

The claimants have also claimed enhancement on the price indicated in the sale instances or even in the policy of the Government as they are quite prior to the issuance of the Notification under Section 4 of the Act. They claim 12% increase per annum on the consideration referred to in these documents for determining the

fair market value of the acquired land.. To support their claim of 12% increase annually, they have relied upon a Division Bench judgment of this Court in the case of Rameshwar Solanki & Another Vs. Union of India & Another 57 (1995) DLT 410 (DB). Exh.R-2 is the policy declared by the Government on 30th April, 1990 fixing the minimum price for acquisition of agricultural land. This price is uniformally applicable to the entire Delhi without exception. Needless to note that it is the minimum price and not the fair market value of the acquired land as contemplated under Section 23 of the Act. If claimants are to be given some increase may be 12% per annum then the claimants would be entitled to nearly Rs.1,59,284/- per bigha as the intervening period between the date of notification and the policy of the Government is more than 3 years. It has not been disputed that this policy was subsequently amended and the minimum price of agricultural land has been fixed at Rs.10 lakhs per acre with effect from 1st April, 1997, which has already been noticed in a recent judgment of this Court in the case of Sh. Mahender Singh Vs. Union of India & Others (L.A. Appl. No. 866/2005 decided on 11th May, 2006). The amount stated in this policy only indicates general prevalent price of agricultural land in the opinion of the Government but it necessarily need not be enforced against the Government because it is for the parties to lead evidence in support of their claims and when they led evidence, they have to abide by the result thereof.

Sale deeds relating to the acquired land or of the same Village is the best

piece of evidence where a willing buyer and a willing seller enters into a sale transaction, which otherwise is genuine and is of a reasonable time prior to the acquisition can safely be lodestar for analyzation of the complex issue of determination of fair market value of the land. Besides the judgment referred above, even in the case of Special Tehsildar, Land Acquisition, Vishakapatnam Vs. Smt. A. Mangala Gowri AIR 1992 SC 666 the Supreme Court indicated that the sale transaction of acquired land within a reasonable time would be the best piece of evidence. It is also settled principle of law that reliance upon awards, judgments and even the policy of the Government would be made by the Court only in absence of such best evidence. The first and primary method for computation of fair market value of land is relatable to the sale instances of land in the same village. It is also the settled principle that 1/3 market value should be deducted for developments of the land. Even in the cases of A. Mangla Gauri and Rameshwar Solanki (supra) relied upon by the claimants, 1/3 deduction was held to be just and fair. Exh.P-3 in our opinion could not have been ignored by the learned Reference Court. Golden Rule of Averages could have been safely applied by the Reference Court for determining the fair market value of the land. Exh.R-4 indicates the value of the agricultural land in Village Mundaka @Rs.1 lakh per bigha. This sale deed was executed on 14th March, 1994 i.e. nearly 6 months subsequent to the date of notification dated 15th October, 1993 issued under Section 4 of the Act while Exh.P-3 was executed on 27th February, 1990 whereby

the land in Village Mundaka was sold for Rs.1,25,000/- per bigha. Giving a reasonable increase on the value reflected in Exh.P-3 for the intervening period of 3 years, the amount would come to nearly Rs.1,70,000/- per bigha while reducing the amount of R-4 at the same rate for the intervening period of 6 months, the amount would come to Rs.94,000/- per bigha and average of both of them would give market value of Rs.1,32,000/- per bigha.

In view of the above discussion, we are of the considered view that the appeals of the claimants are liable to be accepted partially while the appeals filed by the Union of India are liable to be dismissed. Thus, the appeals of the claimants are partially allowed. The claimants would be entitled to get compensation for acquisition of their land @Rs.1,32,000/- per bigha along with interest and other statutory benefits as available under Section 23 (1-A) of the Act in accordance with law. However, in the facts and circumstances of the case, we left the parties to bear their own costs.

(SWATANTER KUMAR)
JUDGE

(S.L. BHAYANA)
JUDGE.

May 25, 2006
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